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United States Senate

COMMITTEE ON  
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

July 31, 2003

VIA U.S. MAIL & FACSIMILE (202/775-7253)

Mr. Cary Sherman  
President  
Recording Industry Association of America  
1330 Connecticut Avenue, NW  
Washington, D.C. 20036

Dear Mr. Sherman:

On June 25, 2003, the Recording Industry Association of America (RIAA) announced plans to file “thousands of lawsuits charging individual peer-to-peer music distributors with copyright infringement.”

According to press reports, the RIAA has won at least 911 subpoenas since June 26, 2003 in order to garner information for the civil lawsuits that could be filed against consumers who are alleged to have illegally used file-sharing programs. These lawsuits would seek civil penalties from \$750 to \$150,000 per song. The RIAA asserts that only those who traffic in “substantial” numbers of files will be targeted.

However, when filing an application for a subpoena, the RIAA does not differentiate between nominal file sharers and those who trade dozens or hundreds of files. Subpoenas have been won for computer users who shared as few as five songs.

The RIAA subpoenas have snared unsuspecting grandparents whose grandchildren have used their personal computers, individuals whose roommates have shared their computers, as well as colleges and universities across the United States like Boston College, DePaul University and the Massachusetts Institute of Technology. Individuals like Bob Barnes, a grandfather from Fresno, California, are not immune from devastating financial losses. Mr. Barnes is facing \$45 million in penalties for downloading some of his “oldie” favorites.

This barrage of RIAA subpoenas is creating such a backlog at the U.S. District Court in the District of Columbia, that the Court has been forced to reassign clerks to process the paperwork. According to the Administrative Office of the U.S. Courts, the D.C. District Courthouse is “functioning more like a clearing house, issuing subpoenas for all over the country.”

Surely it was not Congress' intent when it passed the Digital Millennium Copyright Act to short-circuit due process protections, relegate a U.S. District Court to providing "rubber-stamp" subpoenas, enable the music industry to collect information about consumers with little or no restrictions, and place numerous average consumers at risk of bankruptcy.

The industry has legitimate concerns about copyright infringement. It is imperative to note that we are dealing with stealing artists' songs and the industry's profits. The industry has every right to develop practical remedies for protecting its rights. Yet, the industry seems to have adopted a "shotgun" approach that could potentially cause injury and harm to innocent people who may simply have been victims of circumstance, or possessed a lack of knowledge of the rules related to digital sharing of files. I am sure it is not the industry's intent to needlessly cause harm in its efforts to legally protect its rights. Yet, the law of unintended consequences may be at work in this matter.

As you may know, I have an abiding interest in protecting the privacy rights of individuals. Clearly, I do not condone illegal activity, however I am confident that there may be a more circumspect and narrowly tailored method that RIAA could utilize to prevent substantial illegal file sharing. As a former prosecutor, I know first hand the power of a subpoena and I am concerned about the potential for abuse in the current system.

Given these concerns, please provide the following documents and narrative responses to the Subcommittee no later than Thursday, August 14, 2003:

Copies of all subpoenas issued to Internet Service Providers (ISP) requesting information about subscribers

A description of the standard that RIAA is using when filing an application for a subpoena against an ISP with a U.S. District Court

A description of the methodology RIAA is using to secure evidence of potentially illegal file sharing by computer users.

A description of the privacy safeguards RIAA is using when securing this information in an effort to prevent unfair targeting of de minimus users

A description of how RIAA is protecting the rights of individuals from erroneous subpoenas.

If you have any questions regarding this request, please contact Ray Shepherd, Staff Director of the Permanent Subcommittee on Investigations, at (202) 224-3721. Thank you in advance for your prompt response to this request.

Sincerely,

A handwritten signature in black ink that reads "Norm Coleman". The signature is written in a cursive style with a long horizontal line extending to the right.

Norm Coleman  
Chairman  
Permanent Subcommittee on Investigations

Attachment

## INSTRUCTIONS AND DEFINITIONS

For the purposes of this Schedule, the following instructions and definitions apply:

A. Manner of Objections. Whenever a request for production calls for a document claimed by you to be privileged or to which you otherwise object to producing, please supply sufficient factual detail to support a determination whether or not such document is entitled to a claim of privilege, including (1) the title of the document, (2) the date or dates of the document, (3) the name, position, and address of each person who participated in the communication or the preparation of the document, (4) the name, position, and address of each person to whom the document was addressed, (5) the name and address of each person, other than the addressee, to whom the document or the contents thereof have been communicated by copy, exhibition, reading, or oral conversation of any kind, (6) the general subject matter of the document or communication, and (7) the basis or bases for the claim of privilege or objection.

B. Inability to Respond. If a responsive document was but no longer is in your possession or under your control, provide a complete description of the document, state precisely what disposition was made of it, and identify the person who ordered or authorized such disposition.

C. Definitions.

1. The terms “document” and “documents” are used in their broadest sense and mean the complete original or a true, correct, and complete copy and any non-identical copies (whether different from the original because of notes made on or attached to such copy or otherwise) of any written, graphic, typed, printed, filmed, recorded, or electronic information, no matter how produced, recorded, stored, or reproduced (including computer-stored or generated data, together with instructions or programs necessary to search and retrieve such data), including, without limitation, any writing, letter, telegram, memorandum, electronic mail or message, statement, book, report, study, analysis, digest, record, handwritten note, working paper, chart, graph, drawing, photograph, videotape, audio recording (including telephone answering machine messages), diary, tabulation, data sheet, note of interview or communication, or any other data compilation in the possession, custody, or control of the Recording Industry Association of America, including all drafts of such documents. As to any document or data stored in electronic form, the person or entity responding to the request should also furnish the information in written or printed form.

2. A document “relating to” a given subject matter means a document or statement that relates to, constitutes, embodies, comprises, reflects, identifies, states, refers to, deals with, comments on, responds to, describes, analyzes, contains information concerning, or is in any way pertinent to, that subject matter.

3. The conjunctive term “and” and the disjunctive term “or” shall be interpreted in every instance as meaning “and/or” (i.e., both “and” and “or”), and shall not be interpreted to exclude any information otherwise within the scope of these requests.

E. Limitation of Responses. You may limit your responses to information which has not been previously furnished to the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, United States Senate, in response to mandatory disclosures or otherwise so long as you identify with specificity the date, location, and form of the prior disclosure.

